

## July 26, 2005: Iraq : USCIRF Tells U.S. Ambassador Draft Constitution Fails to Protect Fundamental Rights

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Anne Johnson, Director of Communications, (202) 523-3240, ext. 27

WASHINGTON - The U.S. Commission on International Religious Freedom (USCIRF) wrote to U.S. Ambassador to Iraq Zalmay Khalilzad expressing its strong concern over language in Iraq's draft permanent constitution that is a significant rollback from language in Iraq's interim constitution, the Transitional Administrative Law (TAL), as well as from international human rights law to which Iraq is a party. The new language: limits the equality of women and Iraq's international human rights obligations to only those matters which do not contradict Islam or Islamic law; makes no reference to the right of freedom of religion or belief for every Iraqi citizen; and provides no guarantee of freedom of thought and conscience. "If these drafts become law, Iraq's new democracy risks being crippled from the outset," said USCIRF Chair Michael Cromartie. "Fundamental rights of the individual to debate and dissent from state imposed religious orthodoxies would be curtailed, and the threat of discrimination would hang over all Iraqis, including members of religious minorities, non-religious individuals, and women." "The United States should ensure that universal human rights standards are a basis for urgent dialogue and diplomatic engagement with Iraqis," added Cromartie. "The principle that Islam can coexist with guarantees protecting freedom of thought, conscience and religion must form the centerpiece of U.S. engagement on Iraq's permanent constitution." Specifically, the Commission recommended that the U.S. government, at all levels: encourage the inclusion of human rights guarantees for the individual in the permanent constitution, consistent with the obligations set forth in international instruments to which Iraq is a party, including the International Covenant on Civil and Political Rights (ICCPR). This should include, at a minimum, an unqualified guarantee of the right to freedom of thought, conscience, and religion or belief for each individual Iraqi; unqualified provision of equality and nondiscrimination for members of all groups, including women; and a provision that no law shall be contrary to the rights guaranteed in the bill of rights and international human rights standards; call on the constitutional drafting committee to enter into a dialogue with international experts on religion, human rights, and religious freedom regarding the interplay between these factors and stability and security; and urge Iraq's transitional government to solicit input actively from underrepresented ethnic and religious minorities, including Iraqi ChaldoAssyrians and Baha'is, in the constitutional drafting process. The text of the letter to Ambassador Khalilzad follows. An analysis of the Iraqi draft constitution can be found on the USCIRF web site at [www.uscifr.gov](http://www.uscifr.gov): Dear Ambassador Khalilzad: Several draft versions of the new Iraqi bill of rights have emerged from the constitutional drafting committee, and some of these drafts are now circulating publicly. Based on our enclosed legal analysis, the Commission is writing to express its strong concern that the direction of these drafts represents a significant rollback from the rights and freedoms contained in the Transitional Administrative Law (TAL), as well as from international human rights standards. If these drafts become law, Iraq's new democracy risks being crippled from the outset. Fundamental rights of the individual to debate and dissent from state imposed religious orthodoxies would be curtailed, and the threat of discrimination would hang over all Iraqis, including members of religious minorities, non-religious individuals, and women. Mr. Ambassador, the U.S. government and the international community must challenge these curbs on human rights and democratic freedoms for individual Iraqis. Our analysis demonstrates that the current language is a significant departure from the human rights guarantees extended under the TAL. Moreover, several of the draft provisions fall short of minimum protections afforded under the International Covenant on Civil and Political Rights (ICCPR), to which Iraq is a State Party. Specifically, The rights and equality of women are limited in accordance with Islamic law; There is no reference to the right to freedom of religion or belief as a right of every Iraqi citizen. Guaranteeing freedom of conscience and religion as an individual right for Muslims as well as for members of religious minorities is essential if debate within Islam and dissent from imposed orthodoxies is to take place, and if the political space necessary for plural and alternative voices within the Islamic tradition is to be created; There is no guarantee of the right to freedom of thought and conscience; The scope of the freedom of religion or belief, as well as other fundamental rights such as the freedoms of expression, assembly, and association, is limited to that which is "in accordance with law," a law which is undefined and could violate international human rights standards; The scope of Iraq's international human rights commitments are limited only to such matters that do not "contradict Islam"; A system of personal status (i.e. marriage, divorce, inheritance) legislation tied to religion and sect is introduced that jeopardizes the previously existing secular system; Omitted from the draft is language found in the TAL that there can be no crime except in accordance with existing law at the time the act was committed, a provision that the 2004 Arab Human Development Report points out is an important check on the ability of judges to convict and punish individuals for crimes based on their discretionary interpretation of Islamic law; and Omitted from the draft is a TAL guarantee that no one could be detained "by reason of political or religious beliefs." The understanding that Islam can coexist with universal human rights must form the centerpiece of active U.S. engagement on Iraq's permanent constitution. Constitutional protection of equality and the right to freedom of thought, conscience, and religion or belief is not "un-Islamic." According to a recent study by this Commission surveying the constitutions of the world's 44 predominantly Muslim countries, more than half of the world's Muslim population lives in countries that are neither Islamic republics nor countries that have declared Islam to be the state religion. Moreover, several countries in which Islam is the declared state religion provide constitutional guarantees of the right to freedom of religion or belief, equality and non discrimination, and related rights that compare favorably with international legal standards. In light of these findings, the Commission urges you to ensure that universal human rights standards be a basis for urgent dialogue and diplomatic

engagement with Iraqis. Specifically, we recommend that the U.S. government, at all levels: encourage the inclusion of human rights guarantees for the individual in the permanent constitution, consistent with the obligations set forth in international instruments to which Iraq is a party, including the International Covenant on Civil and Political Rights (ICCPR). This should include, at a minimum, an unqualified guarantee of the right to freedom of thought, conscience, and religion or belief for each individual Iraqi; unqualified provision of equality and nondiscrimination for members of all groups, including women; and a provision that no law shall be contrary to the rights guaranteed in the bill of rights and international human rights standards; call on the constitutional drafting committee to enter into a dialogue with international experts on religion, human rights, and religious freedom regarding the interplay between these factors and stability and security; and urge Iraq's transitional government to solicit input actively from underrepresented ethnic and religious minorities, including Iraqi ChaldoAssyrians and Baha'is, in the constitutional drafting process. Respect for the unfolding democratic process in Iraq also requires guarantees for the fundamental rights and freedoms of every Iraqi. Given that the U.S. has fought a war of liberation for Iraq, and continues to fight an ongoing insurgency, it is not enough to speak out in terms of constitutional process. A successful constitutional outcome in Iraq-as Secretary Rice recently said in Baghdad, "a strong and vibrant and vital democracy [in] the heart of the Middle East"-can only be measured in terms of substance. And on substance, the U.S. cannot, and should not, stand silent. Sincerely, Michael Cromartie

Michael Cromartie, Chair

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